

The Perennial Quest for Democratic Rights: The Case of the National Voter Registration Act

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Abstract

It is by now a truism to agree that American political processes and the policies they produce are increasingly distorted by the extreme concentration of wealth. The reason seems obvious. Concentrated wealth has given rise to a politics dominated by well-funded interest groups. But why have electoral representative arrangements and the voting rights that undergird them proved such a weak counter to the trend toward extreme oligarchy? This paper tries to gain insight by focusing on the largely hidden but effective resistance that hobbled a recent effort to expand voting rights to underrepresented sectors of the population.

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Democracy as we understand it is grounded in the right of ordinary people to vote for the officials who hold state power. The idea is magical, and the demand for voting rights periodically grips the imagination of peoples everywhere. It means or seems to mean that elites with the awesome powers stemming from the mystique of legality and coercion that constitutes the state must periodically return to the people for endorsement. However, just as regularly as the demand for voting rights erupts, so is it contested because it is seen as a threat to property and hierarchy. The oft-quoted words of General Ireton in Cromwell's army capture the reasoning: "If you admit any man that hath a breath and being....Why may not these men vote against all property?...Show me what you will stop at; wherein you will fence any man in a property by this rule."¹

This conflict between property and democracy marks American political history. Revolutionary era elites worked to rein in the democratic passions aroused by the revolution in their construction of the American constitution. The national government was organized to inhibit the influence of voters and parties that might be beholden to voters through the arrangements known as "checks and balances," which, by dividing policy authority between branches of government, made it harder for voter majorities to control the new national government. Voter representation in the election of Senators and the Presidency was weighted in favor of territory and therefore landed property instead of people, an arrangement sought particularly by southern delegates to the constitutional convention. The Court, and much later the officers of the Federal Reserve, which Kevin Phillips defines as our principal wealth-creating institution, were appointed, not elected.²

Winner-take-all elections bent the party system that emerged toward contests between two major parties, and two-party campaigns in turn encouraged politicians trying to win majorities to tamp

down potentially divisive issues in favor of bland or nationalistic appeals. And the sheer complexity of the governmental arrangements that developed on the national and sub-national levels ensured that the process of governance would remain opaque, an impediment to democracy that became more formidable as the techniques and organization of government grew more tangled and dense. Only remember that the radical democrats of the revolutionary era had made it one of their central demands that legislative deliberations be open and accessible.

Finally, while the democratic ideal posits an insulated system of decision-making grounded on equal votes, electoral representative arrangements have always been exposed to the influence of wealth. The inequalities of wealth and income in the society in which electoral representative arrangements are embedded can and do penetrate and swamp democracy. Almost any example will do, and two hundred years of the history of American policies favoring merchants and landowners, railroads, banks and industrialists provide plenty of examples. The stakes were huge, including favorable tariff policies, immense land giveaways, subsidies and government contracts. The opportunities for business influence were also ample as control of state legislatures made possible control of the Senate and control of the Senate brought the Supreme Court under the sway of business. We can see the process well enough just by considering the display of health industry lobbying power during the recent congressional consideration of health care reform, when health business representatives sat with our legislators at hearings when citizen advocates for single payer were arrested. All in all, 1,750 businesses and organizations spent at least \$1.2 billion to shape the legislation in their interests.³

Still, ordinary Americans have the vote, we think, and periodic elections can in principle upend the machinations of the propertied. “The electorate occupies,” said V.O. Key half a century ago, at least in the mystique of [democratic] orders, the position of the principal organ of governance.”⁴ Moreover, the second half of the twentieth century saw large advances in the right to vote with the passage of the Voting Rights Act, which forced state and county governments to allow African Americans to vote; the 26th Amendment, which allowed 18 to 21 year-olds to vote; and the National Voter Registration Act, which made the voter registration process more accessible. So, on one level, the forces of democracy seem to be making gains in the perennial conflict with property.

Or are they? The American electorate is constructed through multiple and contradictory processes. The legal right to vote has at intervals been extended to new groups throughout the course of our history. In the early decades of the 19th century, property qualifications were eliminated, and the formal right to the franchise was extended to nearly all white men. Then, after the Civil War, the freed slaves were granted the franchise at least briefly, then women were included in the early 20th century. Thus the formal right to vote, with its rich symbolism of inclusion and rights, steadily expands, and on this level we seem to have an inclusive democracy that justifies our national boast of being the world's democratic leader. But actual voter participation has always lagged far behind, so that measured by the size of the active electorate we are a laggard among the world's democracies.⁵ Moreover, those who vote are markedly better off than those who don't. The actual electorate is not only shrunken, but it is also misshapen. Simply put, it under-represents those who are the losers in American society.

The big reason is that competing political parties in our two-party system often suppress electoral participation, and they are likely to select those groups for suppression who are at the bottom of the social order. In effect, the institution that has come to play a large role in tempering the age-old conflict between property and democracy is the party system. It has managed this tension not only as we usually think by campaign propaganda, but by vote suppression.

This assertion flies in the face of received political science wisdom. The eminent E. E. Schattschneider for example asserted that "the natural history of the parties is a story of continuous expansion and intensification."⁶ But Schattschneider can cast the parties as the engines of democracy because the history of partisan vote suppression is not writ large in constitutional amendments and landmark legislation. Rather it is largely hidden in the interior intricacies of our system of party campaign tactics and election administration. Because it is hidden, our belief in the near-universal right to vote in the United States remains intact. And even the people who are stripped of the right by partisan chicanery or administrative folderol remain confused. Those who do not vote think it is because of some administrative mix-up, or because as a result of their own ignorance they did not correctly complete the procedural requirements. Or in those instances where their votes are simply discarded, they do not even know that their vote has been denied.

The institutional arrangements that tend to restrict electoral contests to two parties have been much discussed. They include the laws embedded in the constitution and state laws which lead to single member districts and plurality elections where only the candidate with the most votes wins, thus excluding minorities from representation. Over time, the major parties have developed additional obstructions to ward off pesky challengers, including absurdly difficult procedures for ballot access.

The two-party system that results sits astride contradictory pressures. Both parties need and want to win the support of fat cat contributors, even if only to play and win in media dominated campaigns. And they need to win the support of functional voter majorities that include large numbers of people who are not fat cats. The conflict between property and democracy is thus embedded in the parties themselves. In part, the parties cope with this by avoiding issues that tap the conflict, campaigning instead with broad consensual symbolic appeals to the flag or the family or freedom, and of course lots of money for political propaganda. Party operatives also cope by working to exclude or reduce the votes of the most troublesome groups in the electorate. This not only helps to cope with the age-old conflict between property and democracy, but in a large and diverse country with sharp inequalities of condition and diverse cultural aspirations, it simplified the task of building majorities.

From early in the 19th century, even as the formal right to vote was being extended to new groups of white men, and in the North, to some black men, the mass parties that were developing competed in part by working to obstruct the votes of groups likely to vote for the opposition.⁷ The groups targeted were not random. As Richard McCormack pointed out some decades ago, it is “socially discordant” groups who are targeted, mainly immigrants and African Americans who at least in the past have been without the wherewithal to defend themselves, and who are less likely to be able to rally others to their defense.⁸ Newly enfranchised African Americans were barred from the polls in closely contested antebellum elections in New York, Pennsylvania and Rhode Island, for example. Indeed, because they are socially discordant, even the party that suffers the loss of votes is unlikely to come to the defense of the excluded voters. Competition by vote suppression makes more sense in a two party system, first, because with only two parties, it is easier to identify the groups likely to vote for the opposition; second, because over time, a smaller electorate is more manageable, more efficient for both parties; and finally, because the discordant voters are those who are more likely to raise the issues that challenge the propertied and antagonize other voter blocs in the voter coalition.

Some vote suppression occurs as a result of partisan tricks, such as misinformation campaigns (if the lines are long or the weather bad, come back tomorrow), or by shifting the location of the polling places without informing the people whose votes are targeted, or by intimidating would-be voters through maneuvers known to party operatives as caging and voter challenges, or by selective purging of the voter rolls by partisan election officials, or by allowing long lines to build up in poor and minority neighborhoods, or by locating malfunctioning equipment in the polling places in those neighborhoods, or by simply discarding the provisional ballots that are issued to would-be voters whose registration is in doubt. In closely contested elections, such stratagems can easily carry a party to victory. A recent study of the location of low quality and inaccessible precinct voting facilities in Los Angeles showed first that such voting places were more likely to be located in lower income and minority neighborhoods, and second, such facilities, by increasing the difficulty of voting, had a significant impact on turnout.⁹

Then there is the extraordinarily complex and arcane system of registration, itself the historical accumulation of tactics of suppression and run by partisan officials. Moreover old rules seem never to die but rather can be revived when they fit partisan purposes. Only consider that the restrictions on felon voting that gained attention in the 2000 election when Secretary of State Katherine Harris, the chief elections official in Florida, arranged to use a careless match of felon and voter lists to remove many voters from the rolls. The kind of law she employed had its first wide use in the period known as Redemption when southern elites used large-scale incarceration to return many of the freedmen to prison gangs and slavery, and then also stripped those who had been incarcerated of the vote.

In other words, to fully understand the shape of the American electorate we have to pay attention not only to the formal right to vote but to the partisan manipulations to restrict voting that go on in the very bowels of the election and registration administrative systems. To make my case I want to tell the story of how the parties, and in this case mainly but not exclusively the Republican Party, stymied an effort by voting rights reformers to simplify the state and county systems of voter registration. The reformers wanted to bring more poor and minority voters to the polls. The parties did not.

To tell this story, I first need to say something about the political context in which the campaign for this reform emerged. The Democratic Party that took form after the realignment of the 1930s was based on a peculiar regional voter coalition. It included the overwhelming majority of white Southerners – blacks in the South did not vote at the time – and a northern working class based largely in the big cities. On the face of it, the coalition was unwieldy and was shored up by large concessions to the southern section, including concessions crafted to leave the southern system of racial apartheid intact. This voter coalition co-existed with a congressional coalition of southern Democrats and conservative Republicans which developed in the late 1930s and that effectively stymied policy initiatives that might have shored up working class support in the North. In other words, a partisan legislative coalition around property interests over time undermined the voter base of the majority party.

Rapid economic growth after World War II set in motion a series of demographic shifts that destabilized the unwieldy Democratic voter coalition. The mechanization of agriculture in the south, combined with subsidies to large-scale landowners for cutting back on agricultural production, led to the displacement of many rural blacks who had been tenants or sharecroppers. Denied welfare by southern counties who would just as soon see them leave, the displaced workers tried to survive by migrating to the cities, at first the southern cities, then the northern cities. Local conflict in these Democratic bastions was inevitable as growing numbers of poor blacks and Hispanics crowded into impacted ghetto neighborhoods and schools. This only increased the attraction of the growing suburbs to many white working and middle class families. Relocation in traditionally Republican communities of course strained the traditional Democratic loyalties of the white working class.

Meanwhile, manufacturing was also on the move as many industrial establishments relocated in the suburbs, taking advantage of federally subsidized infrastructure and more ample space, and in the lower wage South with its more business friendly political climate. The industrialization of the South meant the relocation of managerial and professional strata whose inclinations were Republican, and their growing numbers helped to set in motion the development of southern Republicanism.

Had party strategy been dominated solely by electoral calculations, the Democrats would have pushed for policies that would at least slow down these shifts, for they were all to prove costly to the party in electoral terms, and none of these trends were actually hard to read. But the parties are also the vehicles of propertied interests, and perhaps that explains why the Democrats in the congress supported the agricultural policies that led to the displacement of rural blacks and their subsequent migration to the cities. They did nothing to change agricultural policies, or Southern welfare policies which would have slowed the displacement of African Americans. They joined with Republicans in supporting the highway and infrastructure subsidies that encouraged suburban growth. And they cooperated again in the policies that not only provided federal support for southern highways and infrastructure, but endorsed the location of defense, military and space installations in the South. Nor was there Democratic enthusiasm for a change in national labor policy which would have encouraged unionism and higher wages in the South by outlawing right to work state laws, thereby at least making possible a long term reorientation of southern politics.

These developments weakened the New Deal Democratic party in the post World War II years, and the Republicans made gains. But there were facts beneath the much touted Republican comeback to national competitiveness that might have attracted the attention of Democratic strategists, if, that is, they saw mobilizing voters for elections as the sine qua non of party strategy. Voter turnout was falling across the board, but it was falling most among lower strata groups who, if they voted, were more likely to vote for the Democrats. Turnout continued to fall and to fall more among the less-well-off through 1980 when Ronald Reagan won the Presidency. In other words, the reservoir of potential Democratic voters was growing. But it was not the political parties that responded to the possibilities that fact suggested.

The National Voter Registration Act that was finally enacted in 1993 was shaped by a ten-year effort by voting rights groups to expand voter participation in the lower reaches of the society. Many of the provisions of the Act reflected the experience of volunteer voter registration campaigns that targeted lower income and minority groups with offers to help them register to vote. The volunteer registration drives began in 1983, and at first the array of civil rights groups, unions, community organizations and social service groups who participated were wildly optimistic.

Turnout had increased in the 1982 mid-term elections, especially among minority and blue-collar voters. So, the task was simple, or so it seemed. With a little boost from the thousands of potential volunteers, millions of people could be brought into the electoral contest, drawn from the enormous reservoir of non-voters in the U.S. And since the non-voters were more likely to be low income people and more likely to be minorities, the surge of new voters would swing the approaching 1984 election to the Democrats. But as the volunteers confronted the registration system, the heady optimism that fueled the effort was deflated.

Registration procedures were bewildering, sometimes bizarrely complicated. They varied by state and often by county, and discouraged if not prevented volunteers from registration work. Election officials limited the number of forms they would distribute to the volunteers, or required them to undergo repeated “trainings” in order to be “deputized,” or refused to allow the volunteers to offer registration except only at certain times and places, or simply refused to allow groups they did not endorse to participate. Over time a consensus emerged among the groups that federal legislation was required to limit state and local discretion over registration.

The main provisions in the legislation that eventually emerged required the states to offer registration by mail, to include voter registration as part of the drivers license application, and to offer registration at other state agencies, particularly those serving the poor and the disabled. It is instructive that it was the voter rights coalition that pushed for the reform and not Democratic leaders, and that it passed the congress only after big concessions had been made, including provisions that gave the federal imprimatur to the purging of the rolls by local officials. Along the way, neither the Democratic majority in the Congress, nor the Democratic governors and mayors, nor the Democratic presidential candidates showed much interest. They did not play the role assigned to them by Schattschneider but merely went along, sometimes reluctantly – often because they did not think “those people” would, in any case, become voters – with the reformers efforts.

There are many examples of partisan resistance. Republican opposition was understandable, because everyone agreed that the pool of non-voters was more likely to tilt to the Democrats. But Democrats resisted as well. In 1984 as the presidential election approached, the reform groups approached three of the governors who had been elected on the upsurge of voters in 1982 to join the effort by making voter registration available in state agencies. The governors responded with

executive orders requiring registration services in the agencies they controlled, and issued press releases to publicize their actions. As might have been expected, Reagan's head of the Office of Personnel Management wrote to the Governors threatening to cut their federal grants-in-aid on the grounds that the gubernatorial orders violated the Intergovernmental Personnel Act. The Committee on Government Operations of the Democratic House held hearings on the contretemps. But in fact the entire string of events was a charade. The governors never did anything to implement their executive orders. Meanwhile, the African American mayors who had been elected in the upsurge of enthusiasm for black power in the late 1960s and thereafter ignored the registration efforts as well, no matter that they could have conducted massive registration drives in the city agencies they controlled.¹⁰

Another example, this one from the presidential campaign of 1984: Walter Mondale was the Democratic candidate, running against incumbent Ronald Reagan. His staff prepared a 250-page study assessing his campaign that concluded he could only win by pitching his campaign to the white working class and minorities. His field director argued that victory was "nearly impossible with the current electorate....We must consider dramatic and perhaps high-risk strategies," and he recommended that \$12 million be spent to register new black, Hispanic, and union voters.¹¹ The recommendations were spurned. The campaign concentrated instead on turning out the vote among existing voters. And Mondale of course lost the election.

In the aftermath of the volunteer registration effort, the reform organizations concentrated on the federal legislative solution they had formulated that they hoped would eliminate or override the obstacles they had encountered in the registration drive of 1983-4. After years of lobbying by the reform groups, of maneuvering to achieve a majority that would avoid a filibuster, and a veto by the first President Bush in 1992 when they succeeded, the NVRA narrowly passed the congress in 1993 and was signed into law by a Democratic president.

Almost immediately Republicans in the congress began to work for repeal, or for amendments that would limit the reach of the Act, or to make state implementation voluntary, or to require proof of citizenship or photo identification. As the date for implementation approached, some states challenged the constitutionality of the law in the courts. Still, the challenges in the courts were defeated, and for awhile it looked as though the NVRA might go far to overcome the obstacles to

voting embedded in the system of registration. The relatively seamless process that the law required in drivers license agencies did result in large scale registration, and the new mail-in forms were widely used. Registration climbed to 76.25 percent in 1996 according to the Federal Election Commission, a 5.65 percent increase over 1992, and an 8.61 increase over 1994.¹²

However, state level resistance to the implementation of voter registration in public assistance and disability agencies was stubborn. Since there was no requirement that voter registration applications be incorporated into the regular agency applications, the process was more dependent on the volition of staff and their supervisors. The rate of voter registration applications as a percentage of transactions was low to begin with and fell dramatically once the Bush administration took office. Meanwhile, the states were actively using the purge provisions of the Act. Between 2005 and 2006 the states removed some 13 million people from the rolls, more than a third of the number of applications processed under the provisions of the Act in that period. During the Bush presidency, the Justice department did nothing to enforce the registration requirements of the Act. Instead, it concentrated on reminding the states to purge their lists of ineligible voters. When the Election Assistance Commission released its required report for 2005-2006, it showed that five states actually reported zero registrations in public assistance and disability agencies, and an additional 4 states reporting zero registrations at disability agencies. The Commission recommended no remedies.¹³ Meanwhile, the Bush Justice Department concentrated on a much-publicized year long campaign to fight what it claimed was widespread voter fraud, which ultimately justified more obstructive rules and practices in the administration of registration and balloting. As the 2008 election approached, the Department of Justice's Voting Section escalated its pressure on ten states to purge its voter rolls, again invoking the authority of the National Voter Registration Act.¹⁴

Voter turnout, especially among minorities and youth, increased in the 2008 election, spurred by the combination of economic downturn, antipathy to the Bush Regime, and enthusiasm for Obama's movement-style electoral campaign. State legislatures responded with a rash of legislative initiatives to tighten access to registration and voting. In Alabama a bill requiring all voters to present a current, government-issued photo identification was approved by the House Constitution and Elections Committee. In Idaho a photo identification requirement was approved by the House in a Republican-dominated legislature. Similar bills are being pressed in Maryland and Mississippi. The Missouri legislature proposed a constitutional amendment to require photo identification, despite

the finding of a study by the Secretary of State that 230,000 Missourians could be disenfranchised as a result. In South Carolina voter identification requirements are close to becoming law. The issue is deeply partisan, and some legislators claim that an estimated 178,000 voters in South Carolina do not have such identification.

Proof of citizenship requirements are also gaining some momentum, no doubt fueled by the growing presence of immigrants. A bill to that effect passed in Georgia in 2009, although it still needs preclearance from the Department of Justice under Section 5 of the Voting Rights Act. And Virginia and Tennessee also introduced proof of citizenship bills. In 2010 at least 5 states introduced bills to limit access to the franchise for felons. Three are viable. In Alabama a bill is pending that would prohibit the legislature from passing a law to restore felon voting rights, and a bill in West Virginia would prohibit convicted felons from voting in state and local elections. In Virginia, Governor Robert F. McDonnell, who had earlier declared April 2010 as Confederate History Month, announced his plan to require nonviolent felons to submit an essay outlining their contributions to society before their voting rights were restored.¹⁵

Meanwhile, the voting rights groups litigated to secure enforcement of the NVRA. In 2008 and 2009 lawsuits were filed in Indiana, New Mexico, Missouri and Ohio. A court order in Missouri raised public assistance agency registration from less than 8,000 applications a year, to over 100,000 in just eight months. And in Ohio, in the summer of 2009, Ohio county offices finally began to provide training and materials on implementation of the National Voter Registration Act, some fifteen years after implementation was legally required.

It is customary to conclude critiques of this kind by pointing to solutions. One sort of solution is unlikely, at least in the foreseeable future. However desirable, we are unlikely to develop a system of proportional representation which would break the two-party monopoly in American elections. The parties themselves stand as powerful opponents of any such reform. Short of that, the direction of reform should be to limit the role of the parties in registration and balloting procedures, and, since complexity lays the ground for chicanery and exclusion, to work to for simplicity, transparency, and inclusiveness.

¹ Cited in E. P. Thompson, E. P., *The Making of the English Working Class*, 1963: 22.

² Kevin Phillips, *Wealth and Democracy: A Political History of the American Rich*, New York: Broadway Books, 2002: 414.

³ Joe Eaton, M.B. Pell and Aaron Mehta, “Washington Lobbying Giants Cash in on Health Reform Debate,” Center for Public Integrity, Washington D.C. March 26, 2010. See also Michael Tomasky, “The Money Fighting Health Care Reform,” *New York Review of Books*. March 11, 2010, *LVII*, 6. According to the Center for Responsive Politics, federal lobbyists spent more than \$3.47 billion last year, an all-time high.

⁴ V.O. Key, “A Theory of Critical Elections,” *Journal of Politics* 17.1 (February 1955): 3.

⁵ See a recent ranking of countries by the conservative Freedom House that compares countries on multiple dimensions of “freedom and democracy” where the United States ranks 30th. Reported in *The Economist*, March 1, 2010.

⁶ Elmer E. Schattschneider, *Part Government: American Government in Action*. New Brunswick: Transaction Publishers, 2004: 47

⁷ See the discussion of ante-bellum vote suppression in the North in Christopher Malone, *Between Freedom and Bondage: Race, Party and Voting Rights in the Antebellum North*, New York, Routledge, 2007.

⁸ Richard McCormick, “The Party Period and Public Policy: An Explanatory Hypothesis,” *Journal of American History*. 66.2 (September 1969): 295.

⁹ See Matt A. Barreto, Mara Cohen-Marks and Nathan D. Woods, “Are All Precincts Created Equal? The Prevalence of Low-Quality Precincts in Low-Income and Minority Communities,” *Political Research Quarterly*, 62.1 (September 2009): 445-458. See also J. G. Gimpel and J.E. Schulknecht, “Political participation and the accessibility of the ballot box,” *Political Geography*. 22, 2003: 471-88.; and Joshua Dyck and Jame Gimpel, “Distance, Turnout and the Convenience of Voting,” *Social Science Quarterly*, 86.3(2005): 531-48

¹⁰ Frances Fox Piven and Richard Cloward, *Why American's Don't Vote: And Why Politicians Want It That Way*. Boston: Beacon Press, 2000: 135.

¹¹ *Newsweek*, Election Extra, November/December 1984, 8.

¹² Frances Fox Piven, Lorraine Carol Minnite and Margaret Groarke, *Keeping Down the Black Vote: Race and the Demobilization of American Voters*. New York: The New Press, 2009: 123.

¹³ *Ibid* 179-186.

¹⁴ See Steven Rosengeld, “Voter Purging: A Legal Way for Republicans to Swing Elections?” *Alternet*, September 11, 2007.

¹⁵ *Washington Post*, April 10, 2010.